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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ANDREA RIDGELL, on behalf of  
herself and others similarly situated  
Plaintiff,  
v.

FRONTIER AIRLINES, INC. a  
Colorado corporation; AIRBUS S.A.S.,  
a foreign corporation doing business in  
the State of California; AIRBUS  
GROUP HQ INC., a corporation doing  
business in the State of California  
Defendants.

**CASE NO. CV 18-4916 PA (AFMx)**

**PLAINTIFF'S RESPONSE TO  
ORDER TO SHOW CAUSE RE:  
DISMISSAL FOR LACK OF  
PROSECUTION**

1 Plaintiff Andrea Ridgell ("Plaintiff") hereby submits the following response to  
 2 the Court's January 28, 2019 Minute Order ordering plaintiff to show cause why  
 3 Defendant Airbus S.A.S. ("Airbus") should not be dismissed for lack of prosecution  
 4 pursuant to Federal Rule of Civil Procedure 4(m).

5 Although the Court is correct that Federal Rule of Civil Procedure 4(m) provides  
 6 for dismissal of a defendant if it is not served within 90 days after the complaint is filed,  
 7 *the rule expressly exempts, inter alia, service in a foreign country under Rule 4(h)(2).*  
 8 Fed.R.Civ.P. 4(m). Airbus is a European multinational corporation headquartered in  
 9 Leiden, Netherlands with a principal place of business in Toulouse, France. As such,  
 10 Plaintiff has been endeavoring to serve this defendant through protocols established by  
 11 the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil  
 12 or Commercial Matters ("Hague Service Convention" or "Hague Convention") in  
 13 accordance with Federal Rule of Civil Procedure 4(h)(2).<sup>1</sup> (Declaration of Kiley Lynn  
 14 Grombacher ("Grombacher Decl.") at ¶¶6-8.)

15 Indeed, the Advisory Committee Notes to the 1993 amendments to Rule 4  
 16 acknowledge the judicial preference for service under the Hauge:

17 This Convention is an important means of dealing with problems of service  
 18 in a foreign country. See generally 1 B. Ristau, International Judicial  
 19 Assistance §§ 4-1-1 to 4-5-2 (1990). Use of the Convention procedures,  
 20 when available, is mandatory if documents must be transmitted abroad to  
 21 effect service. See *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S.  
 22 694 (1988) (noting that voluntary use of these procedures may be desirable  
 even when service could constitutionally be effected in another manner); J.  
 Weis, The Federal Rules and the Hague Conventions: Concerns of  
 Conformity and Comity, 50 U.Pitt.L.Rev. 903 (1989).

23 As a default rule, litigants serving in such fashion can expect service through the  
 24 Central Authority to take at least six months<sup>2</sup>. In July 2008, the Permanent Bureau, the

25 <sup>1</sup> Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil  
 26 or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361.

27 <sup>2</sup> Charles Routh, Dispute Resolution--Representing the Foreign Client in Arbitration  
 and Litigation, in *Going International: Fundamentals of International Business*  
 Transactions 483, 491 (2004).

28 (footnote continued)

1 secretariat of the Hague Conference, distributed a questionnaire to Hague Service  
 2 Convention States to evaluate how the Convention was functioning and to identify  
 3 concerns<sup>3</sup>. Although two-thirds of service requests were completed within two months,  
 4 the Permanent Bureau uncovered an alarming trend, 18.3% of requests took 12 months  
 5 or more to be issued with a certificate<sup>4</sup>.

6 In this action, Plaintiff, has diligently sought to effectuate service so that she may  
 7 prosecute this action<sup>5</sup>. Promptly upon filing, Plaintiff caused the case initiating  
 8 documents, including the summons and the more than twenty-five-page complaint to  
 9 be translated into French. (Grombacher Decl. at ¶ 7.) The service documents, were then  
 10 transmitted to ABC Legal Services, Inc. (“ABC Legal”) for transmittal and service. (Id.  
 11 at ¶ 8.)

12 On or about July 12, 2018, a request for service along with the summons,  
 13 complaint and other case initiating documents and orders was sent by ABC Legal to the  
 14 Ministry de la Justice in Paris. (Id. at ¶ 9.) The process request was confirmed received  
 15 by the Ministry de la Justice in Paris on July 16, 2018 (Id. ¶ 10.) ABC Legal has made  
 16 attempts to follow up regarding service, however, at present, service upon Airbus has  
 17 not been fully effectuated. (Id. at ¶¶ 11, 12.) Given the time delay, Plaintiff is exploring  
 18 other potential mechanisms for service. (Grombacher Decl. at ¶ 13.)

19 Based upon the above, Plaintiff respectfully requests that the Court discharge the  
 20 OSC.

23 <sup>3</sup> Permanent Bureau, Hague Conference on Private Int'l Law, Summary of Responses  
 24 to the Questionnaire of July 2008 Relating to the Service Convention, with Analytical  
 Comments 10 (2009), [http:// www.hcch.net/upload/wop/2008pd14e.pdf](http://www.hcch.net/upload/wop/2008pd14e.pdf).

25 <sup>4</sup> Indeed, such issues have been recognized by the drafters of Federal Rule 4 whose  
 26 comments expressly note, “[s]ervice in a foreign country often is accomplished by  
 means that require more than the time set by Rule 4(m).”

27 <sup>5</sup> Plaintiff’s hands are effectively tied until service has been effectuated as it is settled  
 28 that “[a] federal court does not have jurisdiction over a defendant unless the defendant  
 has been served properly under Fed. R. Civ. P. 4.” *Direct Mail Specialists v. Eclat  
 Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988).

1 DATED: February 4, 2019

**BRADLEY/GROMBACHER, LLP**

2  
3 By: /s/ Kiley Lynn Grombacher  
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